

SB 395

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WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1998



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SENATE BILL NO. 395

(By Senators Bowman, Bailey & Sall)



PASSED MARCH 4, 1998

In Effect NINETY DAYS FROM Passage

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SECRETARIAT OF STATE

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Senate Bill No. 395

(BY SENATORS BOWMAN, BAILEY AND BALL)

[Passed March 4, 1998; in effect ninety days from passage.]

AN ACT to amend chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article one-a, relating to required procedure for regulation of occupations and professions.

Be it enacted by the Legislature of West Virginia:

That chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new article, designated article one-a, to read as follows:

ARTICLE 1A. PROCEDURE FOR REGULATION OF OCCUPATIONS AND PROFESSIONS.

§30-1A-1. Legislative findings.

1 The Legislature finds that regulation should be imposed
2 on an occupation or profession only when necessary for
3 the protection of public health and safety. The Legisla-
4 ture further finds that establishing a procedure for
5 reviewing the necessity of regulating an occupation or
6 profession prior to enacting laws for such regulation will
7 better enable it to evaluate the need for the regulation and
8 to determine the least restrictive regulatory alternative
9 consistent with public health and safety.

**§30-1A-2. Required application for regulation of professional
or occupational group.**

1 (a) Any professional or occupational group or organiza-
2 tion, any individual or any other interested party which
3 proposes the regulation of any unregulated professional or
4 occupational group shall submit an application for
5 regulation to the joint standing committee on government
6 organization no later than the first day of December of
7 any year. The joint standing committee on government
8 organization may only accept an application for regula-
9 tion of a professional or occupational group when the
10 party submitting an application files with the committee
11 a statement of support for the proposed regulation which
12 has been signed by at least ten residents or citizens of the
13 state of West Virginia who are members of the profes-
14 sional or occupational group for which regulation is being
15 sought.

16 (b) The completed application shall contain:

17 (1) A description of the occupational or professional
18 group proposed for regulation, including a list of associa-
19 tions, organizations and other groups currently represent-
20 ing the practitioners in this state, and an estimate of the
21 number of practitioners in each group;

22 (2) A definition of the problem and the reasons why
23 regulation is deemed necessary;

24 (3) The reasons why certification, registration, licensure

25 or other type of regulation is being requested and why
26 that regulatory alternative was chosen;

27 (4) A detailed statement of the fee structure conforming
28 with the statutory requirements of financial autonomy as
29 set out in section six-c, article one, chapter thirty of this
30 code;

31 (5) A detailed statement of the location and manner in
32 which the group plans to maintain records which are
33 accessible to the public as set out in section twelve, article
34 one, chapter thirty of this code;

35 (6) The benefit to the public that would result from the
36 proposed regulation; and

37 (7) The cost of the proposed regulation.

§30-1A-3. Analysis and evaluation of application.

1 (a) The joint committee on government organization
2 shall refer the completed application of the professional or
3 occupational group to the performance evaluation and
4 research division of the office of the legislative auditor.

5 (b) The performance evaluation and research division of
6 the office of the legislative auditor shall conduct an
7 analysis and evaluation of the application. The analysis
8 and evaluation shall be based upon the criteria listed in
9 subsection (c) of this section. The performance evaluation
10 and research division of the office of the legislative
11 auditor shall submit a report, and such supporting materi-
12 als as may be required, to the joint standing committee on
13 government organization no later than the first day of
14 July following the date the proposal is submitted to the
15 joint standing committee on government organization.

16 (c) The report shall include evaluation and analysis as
17 to:

18 (1) Whether the unregulated practice of the occupation
19 or profession clearly harms or endangers the health, safety

20 or welfare of the public, and whether the potential for the
21 harm is easily recognizable and not remote or dependent
22 upon tenuous argument;

23 (2) Whether the public needs, and can reasonably be
24 expected to benefit from, an assurance of initial and
25 continuing professional or occupational competence; and

26 (3) Whether the public can be adequately protected by
27 other means in a more cost-effective manner.

§30-1A-4. Public hearing and committee recommendations.

1 (a) After receiving the required report, the joint standing
2 committee on government organization may conduct
3 public hearings to receive testimony from the public, the
4 governor or his or her designee, the group, organization or
5 individual who submitted the proposal for regulation, and
6 any other interested party.

7 (b) The joint standing committee on government organi-
8 zation shall report its findings and recommendations to
9 the next regular session of the Legislature.

10 (c) The report shall include:

11 (1) Whether regulation of each occupation or profession
12 is necessary for the public health and safety and, if
13 regulation is necessary, recommendations as to what is the
14 least restrictive type of regulation consistent with the
15 public interest; and

16 (2) Whether regulation would result in the creation of a
17 new agency or board or could be implemented more
18 efficiently through an existing agency or board.

19 (d) The report may include a recommendation that the
20 occupation or profession be regulated by any of the
21 following mechanisms, in whole or in part:

22 (1) By practice standards, which may include restric-
23 tions established by statute;

24 (2) By registration, which may include inspections or
25 other enforcement provisions;

26 (3) By statutory certification, which may include testing
27 or assessment of the practitioner's credential or compe-
28 tency;

29 (4) By supervision by a licensed practitioner, which may
30 include practice standards, registration or statutory
31 certification;

32 (5) By licensure by a new or existing agency or board,
33 which may include restrictions of the scope of practice,
34 minimum competency, education, testing, registration,
35 certification, inspection or enforcement.

§30-1A-5. Reapplication requirements.

1 If the joint standing committee on government organiza-
2 tion approves an application for regulation of a profes-
3 sional or occupational group, but the legislation incorpor-
4 ating its recommendations does not become law in the
5 year in which it is first introduced, the applicants for
6 regulation may introduce legislation during each of the
7 two successive regular sessions without having to make
8 reapplication.

**§30-1A-6. Article not to be construed as limiting new legisla-
tion.**

1 Nothing in this article shall be construed as limiting or
2 interfering with the right of any member of the Legisla-
3 ture to introduce or of the Legislature to consider any bill
4 that would create a new state governmental department or
5 agency or amend the law with respect to an existing one.

That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Randy Schonover
.....
Chairman Senate Committee

Nick Fantasio
.....
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

Kermit B. Jones
.....
Clerk of the Senate

Bryant B. Bond
.....
Clerk of the House of Delegates

Carl Ray Tomblin
.....
President of the Senate

John H. ...
.....
Speaker House of Delegates

The within *approved* this the *13th*
day of *March*, 1998.

Jeff Anderson
.....
Governor

PRESENTED TO THE

GOVERNOR

Date 3/11/98

Time 9:25 am